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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN - 1 1994

IN THE MATTER OF:

MM DOCKET NO. 93-75

TRINITY BROADCASTING OF FLORIDA, INC.
and
GLENDALE BROADCASTING COMPANY

Miami, Florida

DATE OF HEARING: May 3, 1994

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FREE STATE REPORTING, INC.
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D.C. Area (301) 261-1902
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FEDERAL COMMUNICATIONS COMMISSION
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-----)
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TRINITY BROADCASTING OF FLORIDA, INC.)
 and)
 GLENDALE BROADCASTING COMPANY)

MM DOCKET NO. 93-75

Miami, Florida)
 -----)

The above-entitled matter come on for a hearing pursuant
 to Notice before Judge Joseph Chachkin, Administrative Law
 Judge, at 2000 L Street, N.W., Washington, D.C. in Courtroom
 3, on Tuesday, May 3, 1994, at 10:00 a.m.

APPEARANCES:

On behalf of Trinity Broadcasting of Florida, Inc.:

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 Washington, D.C. 20036-5383

On behalf of Glendale Broadcasting Company:

JOHN SCHAUBLE, Esquire	GENE A. BECHTEL, Esquire
Cohen and Berfield, P.C.	Bechtel and Cole, Chartered
Board of Trade Building	Suite 250
1129 20th Street, N.W.	1901 L Street, N.W.
Washington, D.C. 20036	Washington, D.C. 20036

On behalf of Chief, Mass Media Bureau

GARY P. SCHONMAN, Esquire
 JAMES SHOOK, Esquire
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 Suite 7212
 Washington, D.C. 20554

I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Morton L. Berfield				
By Mr. Bechtel	5394		5547	
By Mr. Holt		5403		5554
By Mr. Schonman		5502		

E X H I B I T S

<u>Joint</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
MMB/TBF No. 1	5376	5376	
<u>Glendale</u>			
210	5375	5375	
210A	5375	5375	
224	5377	5383	
225	5377	5384	
226	5378	5385	
227	5378	5386	
228	5378	5388	
229	5379	5393	
<u>TBF</u>			
271	5396		
272	5396		
273	5397		
274	5397		
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276	5398		
277	5398		
278	5399		
279	5399		5453
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281	5400		
282	5400		
283	5400		
284	5401		

1	E X H I B I T S		
2	<u>TBF</u>		
3	285	5401	
	286	5401	
4	287	5402	
	288	5402	
5	289	5402	
	290	5403	
6	291	5423	5441
	292	5440	5450
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24	Hearing Began: 10:00 a.m.	Hearing Ended: 3:47 p.m.	
25	Lunch Break Began: 12:33 p.m.	Lunch Break Ended: 1:31 p.m.	

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P R O C E E D I N G S

1
2 JUDGE CHACHKIN: Let's go on the record. The
3 purpose of this hearing session is to take testimony on the
4 issue I added in my Memorandum Opinion and Order which was
5 released October 4, 1993. That issue seeks to determine
6 whether Raystay Company made misrepresentations or lacked
7 candor in its application to assign the construction permit, a
8 low powered television station W23AY, Red Lion/York,
9 Pennsylvania, and if so, the effect thereof on Glendale
10 Broadcasting Company's qualifications to be a licensee. May I
11 have appearances on behalf of the parties? On behalf of
12 Trinity Broadcasting of Florida, Inc., National Minority T.V.,
13 Inc. and Trinity Broadcasting Network?

14 MR. TOPEL: Good morning, Your Honor. Howard Topel
15 and Christopher Holt.

16 JUDGE CHACHKIN: On behalf of Glendale Broadcasting
17 Company?

18 MR. SCHAUBLE: Good morning, Your Honor. John
19 Schauble and Gene Bechtel.

20 JUDGE CHACHKIN: On behalf of the Chief, Mass Media
21 Bureau?

22 MR. SCHONMAN: Good morning, Your Honor. Gary P.
23 Schonman and James Shook on behalf of the Chief, Mass Media
24 Bureau.

25 JUDGE CHACHKIN: And let the record reflect there is

1 | no one appearing here today on behalf of Spanish/American
2 | League Against Discrimination. Any preliminary matters before
3 | we get to the trial of the issue?

4 | MR. SCHAUBLE: Yes, Your Honor. I have one
5 | preliminary matter, a holdover from the previous hearings in
6 | this case. In reviewing the exhibits it appears to us, Your
7 | Honor, that there were two exhibits offered into evidence that
8 | were labeled Glendale Exhibit 210 and in discussions with
9 | counsel for Trinity we agreed that it might be desirable to
10 | call one of those exhibits Exhibit 210A in order that the
11 | record is clear.

12 | The two exhibits I'm talking about are the, the
13 | Miller deposition which we would -- and a one page document
14 | concerning -- which was part of the Public Affairs Manual of
15 | Trinity Broadcasting of Florida, Inc.

16 | Our proposal, Your Honor, if you have no objection,
17 | is to retain the numbering of the Miller deposition as Exhibit
18 | 210 and to relabel the excerpt from the TBF Public Affairs
19 | Manual as Exhibit 210A, and I believe that's acceptable to, to
20 | Trinity.

21 | MR. HOLT: It is, Your Honor.

22 | MR. SHOOK: That would also be acceptable for the
23 | Bureau, Your Honor.

24 | JUDGE CHACHKIN: These are Glendale exhibits we're
25 | talking about?

1 MR. SCHAUBLE: Correct, Your Honor.

2 JUDGE CHACHKIN: All right. The proposal of the
3 parties is adopted and the Miller deposition will be marked
4 for identification and received as Glendale Exhibit 210 and
5 the excerpt from the Public Affairs Manual which is one page,
6 your said --

7 MR. SCHAUBLE: Yes, Your Honor.

8 JUDGE CHACHKIN: -- will be marked for
9 identification and received as Glendale Exhibit 210A.

10 (The documents that were referred to
11 as Glendale Exhibits No. 210 and 210A
12 were marked for identification and
13 received into evidence.)

14 MR. TOPEL: Your Honor, we also have a very brief
15 preliminary matter. At the -- during the first phase of the
16 hearing the Mass Media Bureau had requested certain
17 stipulations and we put together those stipulations. The
18 parties have agreed to them. I just wish to provide Your
19 Honor with a copy and provide them to the court reporter, have
20 them marked and received. These -- it primarily relates to
21 the, the bylaws. 95 percent of that document relates to the
22 bylaws and there are two other items that are addressed. And
23 Mr. Honig has authorized me to indicate that he has no
24 objection to the receipt of those documents and -- so with
25 that, Your Honor, I would ask that a document entitled

1 Stipulation that consists of three pages followed by Tabs A
2 through H be marked for identification as Mass Media/Trinity
3 Broadcasting of Florida Joint Exhibit 1.

4 JUDGE CHACHKIN: The document described will be so
5 marked.

6 MR. TOPEL: And I move that document into evidence.

7 JUDGE CHACHKIN: Any objection?

8 MR. SCHAUBLE: No objection, Your Honor.

9 JUDGE CHACHKIN: The exhibit is received.

10 (The document that was referred to as
11 MMB/TBF Joint Exhibit No. 1 was
12 marked for identification and
13 received into evidence.)

14 MR. TOPEL: And lastly, Your Honor, during the first
15 phase we were asked to provide an index to Trinity
16 Broadcasting of Florida Exhibit 122. I'd like to give Your
17 Honor a copy of that and provide two copies to the court
18 reporter to be associated with Trinity Broadcasting of Florida
19 Exhibit 122. Copies have been distributed to the other
20 parties.

21 JUDGE CHACHKIN: Are there any other preliminary
22 matters? All right. Mr. Bechtel, are you going to proceed?

23 MR. BECHTEL: May it please the Court, I have
24 provided to the court reporter the original and one copy of a
25 document entitled Direct Written Testimony of Morton L.

1 Berfield. It's 117 pages in length consisting of text plus
2 Appendices A through K. I ask that it be marked for
3 identification as Glendale Exhibit 224.

4 JUDGE CHACHKIN: The document described will be
5 marked for identification as Glendale Exhibit 224.

6 (The document that was referred to as
7 Glendale Exhibit No. 224 was marked
8 for identification.)

9 MR. BECHTEL: Judge, I have five more exhibits.
10 Shall I identify them all?

11 JUDGE CHACHKIN: Why don't you identify them all,
12 yes.

13 MR. BECHTEL: There is a direct -- there is a
14 document entitled Direct Written Testimony of Louis I. Cohen,
15 3 pages in length, a signature page, consisting of the text
16 and a one page attachment. I ask that that be marked for
17 identification as Glendale Exhibit 225.

18 JUDGE CHACHKIN: It will be so marked.

19 (The document that was referred to as
20 Glendale Exhibit No. 225 was marked
21 for identification.)

22 MR. BECHTEL: There is a document entitled Direct
23 Written Testimony of George F. Gardner, 3 pages in length plus
24 a signature page. I request that that be marked for
25 identification as Glendale Exhibit 226.

1 JUDGE CHACHKIN: The document will be so marked.
2 (The document that was referred to as
3 Glendale Exhibit No. 226 was marked
4 for identification.)

5 MR. BECHTEL: There's a document labeled Direct
6 Written Testimony of David A. Gardner. It's 20 pages in
7 length consisting of the text plus Appendices A through C. I
8 ask that that be marked for identification as Glendale Exhibit
9 227.

10 JUDGE CHACHKIN: The document will be so marked.
11 (The document that was referred to as
12 Glendale Exhibit No. 227 was marked
13 for identification.)

14 MR. BECHTEL: There's a document labeled Direct
15 Written Testimony of Lee H. Sandifer, 9 pages in length
16 consisting of the text and Appendices A through D. I ask that
17 that be marked for identification as Glendale Exhibit 228.

18 JUDGE CHACHKIN: The document will be so marked.
19 (The document that was referred to as
20 Glendale Exhibit No. 228 was marked
21 for identification.)

22 MR. BECHTEL: There's a document entitled Documents
23 in FCC Public Records, Official Notice Requested. It's 74
24 pages in length consisting of the text and Appendices A
25 through 11.

1 JUDGE CHACHKIN: The document described will be
2 marked for identification as Glendale Exhibit 229.

3 MR. BECHTEL: I misspoke. That was A through H,
4 rather.

5 JUDGE CHACHKIN: A through H? 74 pages, though?

6 MR. BECHTEL: That's correct.

7 JUDGE CHACHKIN: The document will be so marked.

8 (The document that was referred to as
9 Glendale Exhibit No. 229 was marked
10 for identification.)

11 MR. BECHTEL: I offer Glendale Exhibit 224 in
12 evidence.

13 JUDGE CHACHKIN: Any objections?

14 MR. HOLT: Yes, Your Honor, Trinity has some
15 objections. On page 1 of Exhibit 224 we would request that
16 the words under paragraph 3, "as is reflected in this -- in
17 the letter," just that portion be stricken as conclusory. The
18 letter speaks for itself. We -- Trinity disagrees that the
19 letter, that the letter says what the witness is claiming it
20 says and we would ask that that language be stricken.

21 JUDGE CHACHKIN: Do you have any comments?

22 MR. BECHTEL: No. I have, I have no objection to
23 that.

24 JUDGE CHACHKIN: All right. The phrase "as is
25 reflected in the letter" which appears on the first page of

1 Glendale Exhibit 224, the first -- beginning at paragraph 3
2 will be stricken --

3 MR. HOLT: Turning --

4 JUDGE CHACHKIN: -- and the sentence will begin, "I
5 was given a figure of." Go ahead.

6 MR. HOLT: Turning to page 2 of Glendale 224 the
7 last six lines of paragraph 3 beginning with the words "There
8 is nothing" and ending with "can be justified" is in our
9 opinion conclusory and irrelevant and we would ask that that
10 be stricken, as well.

11 JUDGE CHACHKIN: Overruled. You certainly can
12 cross-examine the witness on his theories, but that's his
13 belief as an attorney in preparing this material.

14 MR. HOLT: Thank you, Your Honor. Page 6 of
15 Glendale 224, the last five lines of paragraph 11 beginning
16 with "In fact" and ending with "construction permits" we would
17 ask be stricken as irrelevant in light of the fact that the
18 testimony about discovering the payments, the first date of
19 the certification was not something that was taken into
20 account at that time apparently.

21 JUDGE CHACHKIN: Mr. Bechtel?

22 MR. BECHTEL: It is here being offered in
23 conjunction with testimony supporting what is reflected in the
24 letter. That is to say that additional research might prove
25 additional expenses, would bring the total up to \$30,000.

1 JUDGE CHACHKIN: I'll overrule the objection.

2 MR. HOLT: Page 9 of the Exhibit 224, paragraph 18,
3 we would ask to be stricken as conclusory.

4 JUDGE CHACHKIN: Overruled.

5 MR. HOLT: On page 13 of the exhibit, paragraph 27,
6 we would ask that that be stricken as conclusory.

7 JUDGE CHACHKIN: What is this now? Paragraph 27?

8 MR. HOLT: Paragraph 27. It's "The reason why we're
9 here is to determine whether there was an intent," and I
10 believe it's a conclusory statement rather than a fact.

11 JUDGE CHACHKIN: Well, a person could certainly
12 testify that it was never his intent to misrepresent facts to
13 the Commission, can't he? Isn't that permissible for a
14 witness to testify that it was not his intent to misrepresent
15 facts to the Commission?

16 MR. HOLT: Yes, Your Honor, it's permissible for --

17 JUDGE CHACHKIN: I mean, if he took the stand and
18 testified to that, did you intend to deceive the Commission
19 and he said no, I didn't intend to deceive the Commission,
20 would -- isn't that permissible?

21 MR. HOLT: I understand your ruling, Your Honor.

22 JUDGE CHACHKIN: I'll overrule the objection.

23 MR. HOLT: And that concludes my objections to
24 Exhibit 224.

25 JUDGE CHACHKIN: Glendale Exhibit 224 with the

1 exception of my rulings is received in evidence.

2 MR. HOLT: With respect to Glendale Exhibit 224A,
3 has that been moved?

4 JUDGE CHACHKIN: No, it has not been moved.

5 MR. HOLT: Okay.

6 MR. BECHTEL: I thought I had, but I so move, sir.

7 JUDGE CHACHKIN: Yes. Any objection to 224A which
8 is -- what page of the exhibit are we talking about now?
9 Appendix A we're talking about, right?

10 MR. HOLT: There's no, no objection to that --

11 JUDGE CHACHKIN: All right.

12 MR. HOLT: -- from Trinity, Your Honor.

13 JUDGE CHACHKIN: Any other objection by the Bureau?

14 MR. SCHONMAN: No, sir.

15 JUDGE CHACHKIN: Okay. Exhibit -- well, Appendix A
16 of Glendale Exhibit 224 is also received. Is that the entire
17 exhibit now that we've dealt with or -- no, there's more
18 appendix.

19 MR. BECHTEL: Well, there's Appendices B through K.

20 JUDGE CHACHKIN: Yes. Any objection to any of those
21 appendices?

22 MR. HOLT: None, Your Honor.

23 JUDGE CHACHKIN: Does the Bureau have any
24 objections?

25 MR. SCHONMAN: None.

1 JUDGE CHACKIN: All right. The entire exhibit
2 including the appendices is received in evidence.

3 (The document that was previously
4 marked for identification as Glendale
5 Exhibit No. 224 was received into
6 evidence.)

7 MR. BECHTEL: If it please the Court, I move the
8 admission of Glendale Exhibit 225.

9 JUDGE CHACKIN: Any objections to 225?

10 MR. HOLT: Yes, Your Honor.

11 JUDGE CHACKIN: Please state them.

12 MR. HOLT: My only objection is to paragraph 4, Your
13 Honor, which is speculative. It seems to suggest that Mr.,
14 Mr. Cohen is not certain if he was told this by David Gardner
15 and we would ask that it be stricken.

16 JUDGE CHACKIN: Are we dealing with hearsay here,
17 Mr. Bechtel?

18 MR. BECHTEL: No, sir. I think what Mr. Cohen is
19 testifying to is that he received the figures from David
20 Gardner and paragraph 4 is, is not speculative at all. It's
21 direct testimony that he received this information from
22 someone he had worked with for 30 years and who he grown to
23 trust for accuracy.

24 JUDGE CHACKIN: Well, then it deals with Mr.
25 Berfield also, doesn't it, Gary?

1 MR. BECHTEL: Mr. Berfield -- that's true. That's
2 true.

3 JUDGE CHACHKIN: I'm confused by what this paragraph
4 says actually.

5 MR. BECHTEL: This paragraph was addressed to David
6 Gardner and his relationship with, with his long time client
7 David Gardner. I didn't -- we did not offer a similar
8 paragraph with regard to Mr. Berfield because the evidence
9 shows they have been law partners for -- since 1964.

10 JUDGE CHACHKIN: Does the Bureau have any
11 objections?

12 MR. SCHONMAN: No, sir.

13 JUDGE CHACHKIN: I certainly question the probity
14 -- the probative value of this paragraph, but I'm inclined to
15 allow it in and see where we go with it subject, of course, to
16 cross-examination, so I'll overrule the objection.

17 MR. HOLT: That concludes my objections to Glendale
18 Exhibit 225, Your Honor.

19 JUDGE CHACHKIN: Glendale Exhibit 225 is received.

20 (The document that was previously
21 marked for identification as Glendale
22 Exhibit No. 225 was received into
23 evidence.)

24 MR. BECHTEL: Sir. I move the admission of Glendale
25 Exhibit 226.

1 JUDGE CHACHKIN: Any objections?

2 MR. HOLT: Yes, Your Honor. We have a single
3 objection to page 3, the sentence beginning "Messrs. Cohen
4 and" -- I'm sorry, the sentence beginning, "They are familiar
5 with my commitment," through the end and -- as conclusory.
6 It's an opinion, not a statement of fact.

7 JUDGE CHACHKIN: Mr. Bechtel?

8 MR. BECHTEL: This is the testimony of the gentleman
9 who made the commitment to the FCC to carefully review
10 applications that he signed to insure or guard against any
11 inaccuracies. In this particular instance he was out of town
12 and his staff proceeded with the preparation and signing of
13 the application in reliance on communications counsel, and
14 this person is corroborating and affirming their acts in this,
15 in this testimony.

16 MR. HOLT: Your Honor, Trinity wouldn't have a
17 problem to amending the statement to, to begin with, "I
18 believe it was appropriate," but the statement about they are
19 familiar with my commitment is testimony regarding other
20 witnesses' state of mind and, again, it's conclusory and it
21 should be stricken.

22 JUDGE CHACHKIN: I'll overrule the objection.
23 Glendale Exhibit 226 is received.

24 (The document that was previously
25 marked for identification as Glendale

1 Exhibit No. 226 was received into
2 evidence.)

3 MR. BECHTEL: I offer into evidence Glendale Exhibit
4 227.

5 JUDGE CHACHKIN: Any objections?

6 MR. HOLT: Yes, Your Honor. I would object to
7 paragraph 6 of 227. Again, as you ruled earlier, the letter
8 will speak for itself and the testimony is speculative.

9 JUDGE CHACHKIN: Any objections -- I mean, any
10 comments?

11 MR. BECHTEL: I have no, I have no problem with the
12 letter speaking for itself, but the second sentence is not the
13 letter speaking for itself. It's the substantive testimony,
14 factual testimony, of this witness.

15 JUDGE CHACHKIN: I will receive paragraph 6 with the
16 understanding that the first sentence is not being received
17 for the truth, but merely for the -- this is what the witness
18 believed that the letter indicated and for that purpose. The
19 remainder of the paragraph will be received for the truth. It
20 goes to his state of mind, in other words, is what I'm saying
21 with respect to the first sentence.

22 MR. HOLT: Yes, Your Honor. I understand. Thank
23 you.

24 JUDGE CHACHKIN: Glendale Exhibit 227 is received.
25 (The document that was previously

1 marked for identification as Glendale
2 Exhibit No. 227 was received into
3 evidence.)

4 MR. BECHTEL: I move the admission of Glendale
5 Exhibit 228.

6 JUDGE CHACHKIN: Any objections?

7 MR. HOLT: Yes, Your Honor. Trinity would object to
8 the portion of the second sentence of paragraph 8 on page 4.
9 Well, let me withdraw that objection in light of your earlier
10 ruling regarding the witnesses' ability to --

11 JUDGE CHACHKIN: So you have no objection to this
12 exhibit?

13 MR. HOLT: I have an objection to paragraph 9.

14 JUDGE CHACHKIN: Paragraph 9. All right.

15 MR. HOLT: The second sentence beginning with, "This
16 request was probably made by David Gardner at my direction,
17 but it could have been made by me." That's sheer speculation.

18 JUDGE CHACHKIN: Well, this is his best recollection
19 as to what took place. It's not speculation. He's saying it
20 was either made by David Gardner or he made it. He's not sure
21 which, which that's his testimony based on his recollection.
22 Any problem with that, Mr. Bechtel?

23 MR. BECHTEL: I agree with your reaction to it, sir.

24 JUDGE CHACHKIN: Well, I mean, that's what the man
25 is saying, you know.

1 MR. BECHTEL: That's the best he can recall.

2 JUDGE CHACHKIN: The best he can recall.

3 MR. HOLT: Thank you, Your Honor.

4 JUDGE CHACHKIN: Glendale Exhibit 228 is received.

5 (The document that was previously
6 marked for identification as Glendale
7 Exhibit No. 228 was received into
8 evidence.)

9 MR. BECHTEL: I move Glendale Exhibit 229.

10 JUDGE CHACHKIN: Any objection to 229? Now, these
11 are documents which Glendale wishes to take official notice of
12 and just -- it seems it would be useful to me and, Mr.
13 Bechtel, if you'd tell me what the purpose of requesting
14 official notice is?

15 MR. BECHTEL: Yes, sir.

16 JUDGE CHACHKIN: What do these documents show?

17 MR. BECHTEL: Okay. These documents, I should make
18 clear, do not reach the issue of allocation expenses to a
19 given construction permit. These documents reach the issue,
20 which I think may surface at some point during the course of
21 the proceeding, that the expense certification was not
22 supported by attached invoices, it did not have sufficient
23 detail and that this is part of a derogatory factual mosaic
24 that would be argued either before this judge or by -- or be
25 considered by the Review Board or others as the case goes up.

1 And what we want to establish here is that -- law firms
2 representing various parties have contemporaneously with our
3 filings submitted to the low power television branch similar
4 summary expense itemizations, that is to say, two or three,
5 four or five items, single dollar figures and no attachments
6 and no invoices in support of it. And I do note that in
7 Trinity's reply pleading with regard to its motion to add this
8 issue in this proceeding on page 6 there was criticism of
9 Glendale for not having submitted the engineering invoice in
10 support of the expense certification in the application, their
11 point being that, that we didn't do so because it was
12 inconsistent with the allocation but, nonetheless, there was
13 criticism there of the lack of invoices. In the same document
14 while they were addressing our opposition to their motion
15 rather than the certification itself, they did say -- they
16 were critical of Glendale for not submitting document --
17 documents that supported the legal expenses, that is to say,
18 the invoices, so I, I have a feeling either in briefing before
19 this Court or as -- the Review Board, as we all know,
20 sometimes can find factual mosaics that were not argued but
21 below -- or before them. I just want to for defense purposes
22 establish this information from the Commission's files. Thank
23 you, sir.

24 MR. HOLT: Your Honor, if I may speak to that.
25 There's absolutely no showing in these documents or elsewhere

1 | in any of the testimony that any of the applications that are
2 | attached here or any of the expense statements to which those
3 | -- that are also attached involved multiple applications where
4 | allocations are made among multiple, multiple permits and,
5 | therefore, I can't see how they could be used as a basis for
6 | justifying anything that Raystay did at the time.

7 | JUDGE CHACHKIN: Well, as I understand it, they're
8 | not attempting to justify the breakdown. They're merely --
9 | apparently you've raised the question that the propriety of
10 | not submitting expense statements with the -- when they filed
11 | the certification, and they're showing here that there have
12 | been numerous instances where the same procedure was followed.
13 | Now, if you want to take the position that there was nothing
14 | wrong in them not submitting any expense statements with their
15 | certification, then I assume that we don't need all these
16 | documents in the record, but they're concerned that you may
17 | raise the question to show that it was something improper
18 | somehow with not submitting statements from the engineers and
19 | lawyers and whoever else there was to the Commission.

20 | MR. HOLT: Yes, sir. I believe that will be an
21 | issue that we will examine the witnesses on, but here these
22 | documents -- there's no evidence that any of these
23 | applications involved multiple applications where expenses
24 | were allocated and --

25 | JUDGE CHACHKIN: I understand that, but that's not

1 | what the point is that Mr. Bechtel was concerned about.

2 | MR. HOLT: Um-hum.

3 | JUDGE CHACHKIN: Mr. Bechtel is concerned about the
4 | question of whether it was improper, whether it was for
5 | multiple allocations or single allocations, whether it was --
6 | now, you could argue perhaps that since these were not
7 | multiple applications the fact that the statements were not
8 | submitted is irrelevant. Only in the case of multiple
9 | applications --

10 | MR. HOLT: That's precisely my point, Your Honor.

11 | JUDGE CHACHKIN: But -- so you're taking the
12 | position that if it's only one allocation, you're dealing with
13 | only one facility, then you didn't have to submit statements
14 | from engineers or lawyers? You only had to do so in the case
15 | of multiple applications, multiple allocations? Is that --

16 | MR. HOLT: Well, I'm saying, Your Honor, that
17 | there's, there's no reason to believe that any of the expense
18 | certifications that we see here were not expenses that were
19 | actually incurred with respect to the construction permit
20 | being transferred and, in that instance, I just believe that
21 | these are irrelevant. They don't, they don't show anything.
22 | There's no probative value.

23 | JUDGE CHACHKIN: What's the Bureau's position?

24 | MR. SHOOK: Your Honor, the Bureau's position is
25 | that the issue that we have to deal with was added because --

1 not because the underlying material was not submitted with the
2 certification, but that the certification itself was improper
3 considering what the expenses for that application really
4 were. So the Bureau does not believe that addition of this
5 material will assist the fact finder or the reviewing
6 authority in deciding whether or not there was
7 misrepresentation or lack of candor.

8 JUDGE CHACHKIN: I, I don't think Mr. Bechtel
9 disagrees with you, but Mr. Bechtel is concerned that there
10 was certain arguments made in pleadings in which somehow the
11 contention was raised that if you don't submit underlying
12 documents somehow this is improper.

13 MR. SHOOK: Your Honor, I -- well --

14 JUDGE CHACHKIN: Go ahead.

15 MR. SHOOK: The Bureau's, the Bureau's position
16 would be that the low power television branch and the Video
17 Services Division made the determination of what materials
18 need to be submitted in the first instance in order to satisfy
19 that portion of the Commission that a certification is
20 appropriate and if those portions of the Commission do not as
21 a regular practice require submissions of these materials
22 then, frankly, this material simply does not need to be added
23 to the record.

24 JUDGE CHACHKIN: Now, do you have any evidence that
25 any -- such a requirement, that there is normally a

1 requirement in low power for submission of underlying
2 documents when you seek to sell a permit?

3 MR. HOLT: I have no evidence of that, Your Honor.

4 JUDGE CHACHKIN: Well, then what's -- well. What I
5 propose to do is I don't want to muddy the waters here and I
6 will now receive Glendale Exhibit 229 but it will go forward
7 as a offer of proof and if questions come up -- it won't come
8 up before me, but if it comes up before some other authority,
9 you'll be able to point to these documents and make these
10 arguments, but it's not going to be a factor in this
11 proceeding since I think the Bureau has correctly stated what
12 the issue is here and it doesn't concern whether or not the
13 underlying documents were submitted or not. It concerns the
14 credibility of the request for reimbursement.

15 MR. BECHTEL: Thank you, sir. We appreciate your
16 ruling.

17 JUDGE CHACHKIN: All right. Glendale Exhibit 229
18 will not be received. It will go forward as an offer of
19 proof.

20 (The document that was previously
21 marked for identification as Glendale
22 Exhibit No. 229 was rejected.)

23 MR. BECHTEL: That concludes the identification and
24 offer of our written direct case testimony.

25 JUDGE CHACHKIN: Are you ready for -- to present